

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

A. J. SIMPSON,

Plaintiff,

v.

CASE NO. 08-CV-10491
HONORABLE AVERN COHN

PATRICIA L. CARUSO, et al.,

Defendants.

ORDER DENYING
PLAINTIFF'S MOTION FOR A CERTIFICATE OF APPEALABILITY
AND
MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL

I.

Arthur Simpson aka A.J. Simpson (“Plaintiff”), a Michigan prisoner proceeding pro se, filed a “civil complaint” against defendants in which he sought money damages. The Court construed the complaint as brought under 42 U.S.C. § 1983 and dismissed it for failure to state claim. See Order filed February 13, 2008. Plaintiff filed a motion for reconsideration, which was denied. See Order filed March 4, 2008. Plaintiff filed a notice of appeal.

Before the Court is Plaintiff’s Motion for a Certificate of Appealability (COA) and Motion to Proceed in Forma Pauperis on Appeal. For the reasons that follow, the motions are DENIED.

II.

Plaintiff’s motion for a COA is procedurally improper. A COA is not required to

appeal a case under § 1983. However, in dismissing plaintiff's complaint, the Court found that "any appeal from this order would be frivolous and therefore cannot be taken in good faith." The Court construes plaintiff's motion for a COA as a motion for reconsideration of the Court's decision regarding an appeal. As explained in both the order of dismissal and order denying reconsideration, plaintiff's complaint was properly considered as being brought under § 1983 and subject to dismissal for failure to state a claim. Nothing in plaintiff's motion alters this conclusion. As such, the Court finds no error in determining that an appeal would not be taken in good faith. Given this determination, plaintiff's motion to proceed in forma pauperis on appeal must also be denied. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 19, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Arthur Simpson, 079558, G. Robert Cotton Correctional Facility, 3500 N. Elm Road, Jackson, MI 49201 on this date, March 19, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160